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Court of Appeal Cause No. 58809-5-I

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

NICK ALMQUIST, JOHN ATKINSON, JASON BAIRD, JENNIFER BALDWIN, JON BARNETT, DON BAUMGARTNER, JULIE BEARD, JOHN BERBERICH, TODD BOWMAN, ROBERT BUNN, BRIAN COATS, LAWRENCE CONRAD, THOMAS CONROY, WILLIAM CORSON, Jr., RANDALL COX, COLIN DAVIES, BRADLEY DAVIS, FREDA DECKARD, MICHAEL DOWD, PAUL EDWARDSEN, SANDRA ENGLISH, ANNMARIE FEIN, MALCOM FREDERICK, MARTIN FULLER, CHARLES GORMAN, ANNE HARDING, RONALD HARDING, STACEY HOLLAND, SAMUEL HOVENDEN, BRENT HOWARD, JEFFREY HOWERTON, JEFFREY JONES, GLENN KALETA, DOUGLAS KRUEGER, BETSY LAWRENCE, STEVEN LINCOLN, JOAQUIN LIPANA, NICHOLAS LOVELL, LAURIE MAHN, GREGORY MAINS, BRIAN MARKERT, SHAWN MCCRILLIS, LAURA MURPHY, PATRICIA NEORR, MIKE NHOKSAYAKHAM, GREGORY PATRICK, RODIC PENCE, MATTHEW PERINGER, GLENN ROTTON, KRISTI ROZE, JEREMY SANDIN, MATHAN SANGER, ERIK SCAIRPON, CRAIG SHANKS, JOHN SHEEHAN, DOUGLAS SHEPARD, SHARI SHOVLIN, LON SHULTZ, KIMBERLY SMITH, DAVID SOWERS, RICHARD SPRINGS, BRIAN STEINBIS, JEFFREY SWANSON, JAMES TAYLOR, GREGORY TWENTEY,

ORIGINAL

Petition for Review

KRISTI WILSON AND SHEREE WRIGHT-COX,
Petitioners,

v.

CITY OF REDMOND, a political subdivision
of the State of Washington,
Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

Petitioners Nick Almquist, John Atkinson, Jason Baird, et al., police officers for Respondent City of Redmond, ask this Court to accept review of the Court of Appeals' decision designated in Part II.

II. COURT OF APPEALS DECISION

Almquist v. City of Redmond, No. 58809-5-I (Ct. App. Div. I Aug. 27, 2007). The decision is in the Appendix at pages A-1 to A-11.

III. ISSUE PRESENTED FOR REVIEW

Whether payments required by an interest arbitration award become "due" on the date of the award for the purpose of applying the timely payment requirements of WAC 296-128-035, which is enforceable through the Minimum Wage Act, RCW Ch. 49.46, the Wage Payment Act, RCW Ch. 49.48, and the Wage Rebate Act, RCW Ch. 49.52?

Assignment of Error: The Court of Appeals erred in concluding that payments due by virtue of a "final and binding" interest arbitration award, issued in accordance with RCW 41.56.450, do not become due on the date of the award. The Court of Appeals also erred in concluding that interest arbitration awards only become due when the prevailing party brings a separate enforcement action or bargains for a specific due date.

IV. STATEMENT OF THE CASE

A. Factual Background.

Plaintiff-Petitioners were employed by the Defendant-Respondent City of Redmond as police officers. (CP 383). In this capacity, the

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officers were represented for purposes of collective bargaining by the Redmond Police Association ("RPA"). (CP 383).

The RPA and the City participated in negotiations for a January 1, 2002 through December 31, 2004 collective bargaining agreement between the RPA and the City. (CP 6). The collective bargaining agreement was to be a successor to a January 1, 2001 through December 31, 2001 collective bargaining agreement between the RPA and the City and was to set forth the wages, hours, and other terms and conditions of employment for the Plaintiffs. (CP 384).

The City and the RPA were unable to reach agreement on the terms of a January 1, 2002 through December 31, 2004 collective bargaining agreement. (CP 384). The dispute over the unresolved issues between the RPA and the City was submitted to "interest arbitration" in accordance with RCW 41.56.450. (CP 384).

On March 3, 2004, arbitrator Jane Wilkinson issued an award providing for, among other things: (a) a wage increase of 3.51% retroactive to January 1, 2002, (b) a wage increase equal to 100% of the percentage change in the Consumer Price Index ("CPI") retroactive to January 1, 2003, and (c) a wage increase equal to 100% of the percentage change in the CPI retroactive to January 1, 2004. (CP 446-487). The parties received the award on March 5, 2004. (CP 384).

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Subsequent to receiving Arbitrator Wilkinson's award, attorneys for the City and the RPA exchanged a series of e-mails during the months of March and April, 2004. (CP 387). The substance of these emails addressed incorporating the arbitration award into the language of the collective bargaining agreement and implementing the arbitrator's award. (CP 387). In this regard, the RPA's position throughout the email exchange was that payment of the retroactive wage award should occur as quickly as possible. (CP 387).

Despite the RPA's requests for payment of the retroactive wage payment, five intervening paydays (approximately two months) passed between the receipt of the arbitrator's award and the payment of wages required by that award. (CP 387). On May 25, 2004, the City paid RPA members for the retroactive wages owed under the March 3 arbitration award. (CP 387). The City's delay in paying the retroactive wage increase resulted in this litigation.

B. Procedural History.

On December 29, 2004, the officers filed a complaint based on the delayed payment of the retroactive wage increase. The complaint seeks damages arising out of violations of Washington's Minimum Wage Act (MWA), RCW Ch. 49.46, Wage Payment Act (WPA), RCW Ch. 49.48, and Wage Rebate Act (WRA), RCW Ch. 49.52, as interpreted by the

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Department of Labor and Industries in WAC 296-128-035. The officers' complaint seeks damages, costs, attorneys' fees, and prejudgment interest in accordance with the civil enforcement provisions of the MWA, RCW 49.46.090, the WPA, RCW 49.48.030, and the WRA, RCW 49.52.070. (CP 1-9).

On July 27, 2005, the City moved for summary judgment on the officers' claims and, after supplemental briefing by the parties, the court entered an order dated February 13, 2006, granting the City's motion in part, but denying the City's motion as a matter of law as to the claims arising under the WPA. The trial court dismissed the officers' claims arising under the MWA and the WRA, with prejudice.

On June 19, 2006, the officers' second claim for relief was put before the trial court on stipulated facts and exhibits. Having previously dismissed the first and third claims for relief, the trial court limited its fact finding and conclusions of law to a determination of the City's liability for interest and attorney's fees under the WPA. (CP 593-596). On August 7, 2006, the trial court entered judgment in the City's favor and dismissed the officers' second claim for relief with prejudice. (CP 593-596). In particular, the trial court found that the interest arbitration award ordering retroactive wage payments "did not create an immediate obligation to pay money to the employees." (CP 595). The trial court held

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that such an obligation "had to be created through entry of a judgment which was never done or a collective bargaining agreement which was done in June 2004, after the wages had been paid." (CP 595).

On September 1, 2006, the officers filed a Notice of Appeal of the trial court's summary judgment order. On August 27, 2007, the Court of Appeals affirmed the trial court's summary dismissal of the officers' statutory wage and hour claims. A-11. The Court of Appeals affirmed the dismissal because "the precise date when the retroactive payments were 'due' was not fixed by statute, judgment, or contract." A-2. In so holding, the Court of Appeals found in pertinent part that the date of the arbitration award was not a due date for the retroactive wage payments. A-8. Petitioners now seek review of that decision.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court of Appeals incorrectly held that interest arbitration awards only become due for the purpose of WAC 296-128-035 when the prevailing party brings a separate enforcement action or the parties bargain for a specific due date. This holding ignores the express language of the statute and the legislative intent behind it. The decision of the Court of Appeals allows an employer to delay the payment of wages awarded in an interest arbitration without the adversely impacted employees having any remedy under Washington's wage-and-hour laws and regulations, a result inconsistent with the letter and spirit of the law.

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A. The Court of Appeals Incorrectly Held that Wage Payments Due by Virtue of an Interest Arbitration Award Have No Due Date as a Result of the Award.

1. Petitioners Have a Statutory Remedy For the Delayed Payment of Retroactive Wage Awards Under Washington's Wage and Hour Statutes.

Washington's MWA sets forth a statutory minimum wage and further specifies conditions under which other wages must be paid to employees. *See* RCW 49.46.020; RCW 49.46.130. The MWA authorizes Washington's Department of Labor & Industry ("DLI") to issue regulations for enforcement of the statute. RCW 49.46.040. In 1989, the DLI adopted WAC 296-128-035 in accordance with the authority granted by the MWA. *See* Wash. St. Reg. 89-22-016 (Oct. 24, 1989). WAC 296-128-035 prescribes when wage payments become due: "All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days." WAC 296-128-035. The Court of Appeals agreed that "wages due" must be paid within the prescribed timeframes of the regulation. A-7.

"Wages," as that term is used in the regulation, encompasses all "compensation due to an employee by reason of employment." *Hayes v. Trulock*, 51 Wn. App. 795, 806, 755 P.2d 830 (1988) (citing RCW 49.46.010(2)). Under this definition, the term "wages" has specifically been held to include retroactive wage awards entered pursuant to an

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interest arbitration proceeding. *See Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 857, 861, 93 P.3d 108 (2004). The Court of Appeals agreed in this case, stating: "The retroactive pay raises awarded in the interest arbitration were wages." A-7.

When a violation of the regulation is established, Washington's MWA, WPA, and WRA provide for civil enforcement remedies. *See Wingert v. Yellow Freight Systs., Inc.*, 146 Wn.2d 841, 849-50, 50 P.3d 256 (2002); *see also id.* at 848 ("properly promulgated, substantive agency regulations have the force and effect of law").

The civil enforcement provisions in the MWA allow monetary damages and attorney's fees when an employer "pays an employee less than wages to which such employee is entitled under *or by virtue of this chapter*." RCW 49.46.090 (emphasis added). WAC 296-128-035 was promulgated on the basis of the statutory authority granted in RCW 49.46.040 of the MWA. Thus, the MWA's civil enforcement remedies apply to the officers' wages that remained unpaid during the period of March 3 through May 25, 2004.

Similarly, under the WPA, the City's conduct in delaying payment of the retroactive wage award violated RCW 49.48.010, which provides that it is "unlawful for any employer to withhold or divert any portion of an employee's wages." Under DLI's administrative rules, wages are

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unlawfully "withheld" if not paid within the time period set forth in WAC 296-128-035. The statutory remedy for a violation of RCW 49.48.010 is a judgment for wages owed and an award of reasonable attorney's fees. RCW 49.48.030.

Third, the WRA mandates the payment of any wages arising under "statute, ordinance, or contract." RCW 49.52.050(2). The civil enforcement provisions in the WRA provide for an award of twice the amount of wages unlawfully withheld upon a showing that the employer's actions were willful and with the intent to deprive the employee of any part of his wages,[1] plus attorney's fees. RCW 49.52.070.

Arbitrator Wilkinson's March 3, 2004 arbitration award required the City to make a retroactive wage payment to the officers. (CP 446-487). The City unlawfully delayed payment of the retroactive wages until May 25, 2004. (CP 387). Five intervening paydays passed between the date of the award and the payment of the wages required by that award. (CP 387). That delay is in violation of the requirement that employers pay "all wages" at monthly intervals. WAC 296-128-035. Because the

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[1] Had the trial court not erred in dismissing the officers' claims under the WRA, the officers could have presented evidence indicative of the City's willful conduct sufficient to support an award of double damages, and they will do so if the case is remanded.

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wages at issue were not paid in accordance with the requirements of WAC 296-128-035, the officers are entitled to recover monetary damages occasioned by the delay.

2. The Date of the Arbitrator's Award Is the Due Date for Payment.

Contrary to the Court of Appeals' decision in this case, the date of the arbitrator's award does establish when the wages were "due" for the purpose of WAC 296-128-035. The arbitrator's award creates a legal obligation to pay. *City of Moses Lake v. International Ass'n of Firefighters, Local 2052*, 68 Wn. App. 742, 749, 847 P.2d 16 (1993). In *City of Moses Lake*, the City sought court review of an arbitration award increasing the salaries of the City's firefighters. The court ultimately found that the salary increase in the arbitration award was consistent with state law and concluded that, as of May 21, 1991, the date of the arbitration award, the City "was under a duty to raise the firefighters' salaries in the amount specified." *Id.*

In the decision below, the Court of Appeals narrowly interpreted *Moses Lake*, declaring that its holding did not apply because it did "not specifically mention retroactive pay and there was no issue about the application of the payment interval rule." A-9. It is true that *Moses Lake* dealt with the different issue of prejudgment interest, but in order to calculate that interest, the court first had to decide that the date of the arbitration award established a fixed due date. 68 Wn. App. at 749, 847

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P.2d 16. That is the same issue presented in this case. As in *Moses Lake*, the arbitrator's award established a legal obligation or "duty" of payment. It follows that the wages were "due" on May 3, 2004, the date of the award, as required to apply WAC 296-128-035, which is enforceable through the MWA, the WPA, and the WRA.

3. The Arbitrator's Award Is "Final and Binding" by the Express Language of the Statute.

The Court of Appeals erred in concluding that "[t]he statute does not specifically fix a due date." A-8. While the statute does not explicitly provide that "the award shall be due on the date of issuance," a due date is a necessary implication in order to give meaning to the statute and effectuate legislative intent.

The goal of statutory construction is to give effect to the Legislature's purpose. *Nucleonics Alliance, Local Union No. 1-369 v. Washington Public Power Supply System*, 101 Wn.2d 24, 29, 677 P.2d 108 (1984). *See also Mason v. Bitton*, 85 Wn.2d 321, 326, 534 P.2d 1360 (1975) (legislation should be construed to make it "purposeful and effective"). RCW 41.56.905 demands that the chapter be "liberally construed." *See also International Ass'n of Firefighters Local 469 v. Yakima*, 91 Wn.2d 101, 109, 587 P.2d 165 (1978) (calling for liberal construction of RCW 41.56**Error! Bookmark not defined.**). This requires that the coverage of the Act's provisions be liberally construed

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and its exceptions narrowly confined. *Nucleonics Alliance*, 101 Wn.2d at 29, 677 P.2d 108.

RCW 41.56.450 mandates that an interest arbitration award "shall be final and binding upon both parties." The award is subject to superior court review "solely upon the question of whether the decision of the panel was arbitrary or capricious." RCW 41.56.450; *see also* RCW 41.56.480 ("A decision of the arbitration panel shall be final and binding on the parties…").

A term used in a statute is to be given its "plain and ordinary meaning," unless a definition or contrary intent appears in the statute. *City of Bellevue v. International Ass'n of Fire Fighters, Local 1604*, 119 Wn.2d 373, 380, 831 P.2d 738 (1992) (using the Random House Dictionary of the English Language to define "adjust"). By using the language "final and binding," the Legislature signaled its intent that interest arbitration awards should be obeyed by the parties without further process. "Final" means "conclusive or decisive," Random House Webster's Dictionary 245 (2d ed. 1996), indicating that the arbitrator's decision is the end of the line. "Binding" means "obligatory," *id.* at 66, which signifies that the parties are required to abide by the award. *See also Godfrey v. Hartford Cas. Ins. Co.*, 99 Wn. App. 216, 221, 993 P.2d 281 (2000), *rev'd on other grounds*, 142 Wn.2d 885, 16 P.3d 617 (2001) (determining that the opposite of "final and binding" would be a situation in which "either party dissatisfied with the damages awarded at

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arbitration may set aside that award and proceed to trial"); *Tombs v. Northwest Airlines, Inc.*, 83 Wn.2d 157, 161, 516 P.2d 1028 (1973) ("It is the evaluation and conclusion of the arbitrator, and not those of the courts, that the parties have promised to abide by.").

In addition, by giving the losing party a very limited avenue for review, the Legislature reinforced its intent: interest arbitration awards cannot be challenged except in very rare circumstances. As the Court of Appeals noted in a case interpreting RCW 7.04, the statute governing contract arbitration, "courts accord substantial finality to arbitration decisions." *Dahl v. Parquet & Colonial Hardwood Floor Co., Inc.*, 108 Wn. App. 403, 407, 30 P.3d 537 (2001). In some ways, interest arbitration awards are even more final than court judgments. While judgments can sometimes be overturned on appeal with "de novo" review, which gives no deference to the decision below, interest arbitration awards can only be modified if they are "arbitrary or capricious," RCW 41.56.450, a highly deferential standard.

Because the interest arbitration award is "final and binding," it creates a legal obligation to pay. The Legislature intended that the parties to an interest arbitration comply with the award upon its issuance. To ensure that result, the date of the award must be viewed as a due date.

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4. The Prevailing Party Should Not Be Required to Enforce an Interest Arbitration Award in Court.

Requiring the prevailing party to enforce the award in court undermines the purpose behind RCW 41.56. The purpose of collective bargaining and interest arbitration is to promote industrial stability and productive employer-employee relations. RCW 41.56.010 (purpose is "to promote the continued improvement of the relationship between public employers and their employees"); RCW 41.56.430 (purpose is to ensure "the uninterrupted and dedicated service" of uniformed employees). If disputes are not resolved with finality in the arbitration process and prevailing parties are instead required to go to court to enforce their awards, employer-employee relations are likely to deteriorate rather than improve. The losing party will have incentive to delay its compliance with the award, which will create tension and prolong disputes in contravention of the intent behind RCW 41.56.

The requirement of court enforcement also undermines the purpose of arbitration in general, which is to provide an inexpensive, expeditious alternative to litigation. Washington has a "strong public policy... favoring arbitration of disputes." *Perez v. Mid-Century Ins. Co.*, 85 Wn. App. 760, 765, 934 P.2d 731 (1997) (citing *Munsey v. Walla Walla College*, 80 Wn. App. 92, 94, 906 P.2d 988 (1995)). The purpose of arbitration is to avoid the courts, thereby avoiding "the formalities, the delay, the expense and vexation of ordinary litigation." *Barnett v. Hicks*,

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119 Wn.2d 151, 160, 829 P.2d 1087 (1992) (interpreting the Uniform Arbitration Act (UAA), RCW 7.04[2]). Arbitration is supposed to be a "substitute for, rather than a mere prelude to, litigation." *Dahl v. Parquet & Colonial Hardwood Floor Co., Inc.*, 108 Wn. App. 403, 407, 30 P.3d 537 (2001) (quoting *Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885, 892, 16 P.3d 617 (2001)). One of the many benefits of arbitration is that it provides "[i]mmediate settlement of controversies." *Barnett*, 119 Wn.2d at 160, 829 P.2d 1087. The use of the term "immediate" echoes the "final and binding" language of RCW 41.56.450, indicating that arbitration awards resolve the dispute at a fixed point in time. This fixed point in time sets the due date for complying with the arbitration award.

The Court of Appeals also erred because the statute does not contain a general enforcement action. The Court of Appeals pointed to the last sentence of RCW 41.56.480 in support of its position that employees can pursue an enforcement action to expedite arbitration award payments: "A decision of the arbitration panel... may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose." A-8, A-10. The Court of Appeals has incorrectly interpreted RCW 41.56.480 because that provision is intended to remedy the specific situation in which one

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[2] Although the UAA does not apply to employer-employee disputes, the general

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party "refuse[s] to submit to the [interest arbitration] procedures." RCW 41.56.480; *see also City of Spokane v. Spokane Police Guild*, 87 Wn.2d 457, 465, 553 P.2d 1316 (1976) (interpreting RCW 41.56.480 as a mechanism to force a refusing party to submit to factfinding or arbitration); *International Ass'n of Fire Fighters, Local 1445 v. City of Kelso*, 57 Wn. App. 721, 732, 790 P.2d 185 (1990) (stating that RCW 41.56.480 would be used if either party refused to submit to arbitration). The last sentence of the provision must be read in the context established by the rest of the provision. *See Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 519, 22 P.3d 795 (2001). Given that context, RCW 41.56.480 is not intended as a general enforcement action for interest arbitration awards.

If the due date for interest arbitration award payments truly was supposed to be determined in court, then the Legislature would have created an enforcement action for that purpose. The Legislature is clearly capable of creating such an action because it has specified a process for confirming contract arbitration awards in court. RCW 7.04A.220. Because the Legislature did not create a general enforcement action for interest arbitration awards, it must be assumed that it did not intend to create one. *See State, Dept. of Licensing v. Cannon*, 147 Wn.2d 41, 57, 50

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principles of arbitration still apply to interest arbitration, which is a form of arbitration.

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P.3d 627 (2002) (declaring that courts "will not add to or subtract from the clear language of a statute"). If a procedure does not exist for enforcing interest arbitration awards in court (outside the context of parties who refuse to submit to interest arbitration altogether), then the awards must be viewed as self-effectuating for the statute's "final and binding" language to have any meaning.

In sum, requiring the prevailing party to enforce its award in court contravenes the intent of RCW 41.56 and the purpose of arbitration more generally. Furthermore, the Legislature did not create a general enforcement action for interest arbitration awards, if RCW 41.56.480 is interpreted in context. Thus, interest arbitration awards must establish their own due date without the need for court enforcement.

5. The Parties Should Not Be Required to Set the Due Date for an Interest Arbitration Award by Contract.

The Court of Appeals erroneously suggested that the parties should have bargained for a specific due date. A-10. Such a requirement disregards the statutory language and the caselaw, and it undermines the purpose of interest arbitration.

In *Moses Lake*, the City argued that it was not obligated to pay the arbitration award until the parties signed an agreement. The Court of Appeals disagreed: "Contrary to the City's argument, the signing of a collective bargaining agreement in accordance with that award is not a prerequisite to the legal obligation to abide by the award." *City of Moses*

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Lake v. International Ass'n of Firefighters, Local 2052, 68 Wn. App. 742, 749, 847 P.2d 16 (1993). Thus, the duty to pay arises from the arbitration award itself, not subsequent actions of the parties.

As the Court of Appeals recognized below, interest arbitration is used "to determine the terms of the contract between the parties when they cannot negotiate an agreement, and it results in a new agreement." A-3 (quoting *City of Bellevue v. International Ass'n of Fire Fighters, Local 1604*, 119 Wn.2d 373, 376, 831 P.2d 738 (1992)). In other words, interest arbitration (1) sets the terms of the contract (2) when the parties cannot settle the issues themselves.

Because the arbitrator sets the terms of the contract, the terms are not subject to additional negotiation. It makes no sense that employees would be required to bargain for something they have already been awarded. As RCW 41.56.450 provides, interest arbitration exists "to resolve the dispute." Resolution means that the dispute is settled and requires no further discussion. This finality is important because parties only reach interest arbitration when collective bargaining has failed. *City of Bellevue*, 119 Wn.2d at 379, 831 P.2d 738; *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wn.2d 450, 461, 938 P.2d 827 (1997). Whereas parties are not required to agree in bargaining, they relinquish their decision-making power in interest arbitration. *International Ass'n of Fire Fighters, Local 1445 v. City of Kelso*, 57 Wn. App. 721, 732-33, 790 P.2d 185 (1990). Once the arbitrator has made a decision, the losing party

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should not be given an opportunity to disagree. To avoid such disagreement, the arbitrator's award must be viewed as a final determination creating a legal obligation. Thus, the prevailing party need not wait for a collective bargaining agreement to collect.

B. Review Is Appropriate Because The Petition Involves An Issue of Substantial Public Interest.

In determining whether an issue is appropriate for review before this Court, Petitioners must demonstrate that the Petition involves an issue of substantial public interest. RAP 13.4(b)(4). This case presents a prime example of an issue of substantial public interest. The Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect wage practices throughout the state, as well as all uniformed personnel (police and firefighters) in the state that have access to interest arbitration in accordance with RCW 41.56.

In WAC 296-128-035, the DLI has set forth a minimum standard for the payment of wages which applies to virtually all employers within the State of Washington. *See* RCW 49.46.010(4) (defining "employer" as "any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee"); WAC 296-128-010 (extending record keeping requirements and time-of-payment requirements to all employees who are subject to the MWA). The Court of Appeals' decision has the potential to create exceptions to the time-of-

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payment requirements in WAC 296-128-035 that have a significant negative effect on workers across the state in contravention of past policies of the Legislature and the DLI.

WAC 296-128-035 exists in the context of Washington's "long and proud history of being a pioneer in the protection of employee rights." *International Ass'n of Fire Fighters v. City of Everett*, 146 Wn.2d 29, 35, 42 P.3d 1265 (2002). The regulation furthers Washington's "strong policy in favor of payment of wages due employees." *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 157, 961 P.2d 371 (1998). *See* RCW 49.46.005 (noting "vital and imminent concern" over "minimum standards of employment"); RCW 49.52.050 (imposing criminal liability for willful withholding of wages); RCW 49.48.010 (requiring that wages be paid timely upon termination of employment). In light of the strong policy of ensuring wage payment, the Court of Appeals' decision should be overturned.

When interpreting statutes, the Court will avoid an interpretation that leads to an absurd result. *Anderson v. State Dept. of Corrections*, 159 Wn.2d 849, 864, 154 P.3d 220 (2007). The Court of Appeals' interpretation does lead to such a result by providing an incentive for employers to delay the payment of retroactive wages, at least until their employees file suit. Taken to its logical conclusion, the Court of Appeals' decision means that an employer can indefinitely delay paying its employees the wages that the employees have earned. The employer

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could then put those funds to a use that benefits the employer. For example, the employer could use the funds to purchase goods and services, or it could place the funds into an account that earns interest for the employer. According to the Court of Appeals' decision, as long as the employer pays the wages before the employees obtain a judgment or sign a collective bargaining agreement, the employer escapes any liability to the employees for the delay. The employer would not even be required to pay interest, even though that is the generally accepted method of compensating another for the use of his money. In effect, then, employers could finance their operation on the backs of their workers, a result that flies in the face of Washington's wage-and-hour laws and longstanding public policy.

VI. CONCLUSION

This Court should accept review for the reasons indicated in Part V and reverse the decision of the Court of Appeals, and remand this case to the trial court to permit Petitioners to proceed with their statutory wage claims against the City.

DATED this 26th day of September, 2007.

Respectfully submitted,

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Court of Appeal Cause No. 58809-5-I

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

NICK ALMQUIST, JOHN ATKINSON, JASON BAIRD, JENNIFER BALDWIN, JON BARNETT, DON BAUMGARTNER, JULIE BEARD, JOHN BERBERICH, TODD BOWMAN, ROBERT BUNN, BRIAN COATS, LAWRENCE CONRAD, THOMAS CONROY, WILLIAM CORSON, Jr., RANDALL COX, COLIN DAVIES, BRADLEY DAVIS, FREDA DECKARD, MICHAEL DOWD, PAUL EDWARDSEN, SANDRA ENGLISH, ANNMARIE FEIN, MALCOM FREDERICK, MARTIN FULLER, CHARLES GORMAN, ANNE HARDING, RONALD HARDING, STACEY HOLLAND, SAMUEL HOVENDEN, BRENT HOWARD, JEFFREY HOWERTON, JEFFREY JONES, GLENN KALETA, DOUGLAS KRUEGER, BETSY LAWRENCE, STEVEN LINCOLN, JOAQUIN LIPANA, NICHOLAS LOVELL, LAURIE MAHN, GREGORY MAINS, BRIAN MARKERT, SHAWN MCCRILLIS, LAURA MURPHY, PATRICIA NEORR, MIKE NHOKSAYAKHAM, GREGORY PATRICK, RODIC PENCE, MATTHEW PERINGER, GLENN ROTTON, KRISTI ROZE, JEREMY SANDIN, MATHAN SANGER, ERIK SCAIRPON, CRAIG SHANKS, JOHN SHEEHAN, DOUGLAS SHEPARD, SHARI SHOVLIN, LON SHULTZ, KIMBERLY SMITH, DAVID SOWERS, RICHARD SPRINGS, BRIAN STEINBIS, JEFFREY SWANSON, JAMES TAYLOR, GREGORY TWENTEY,

KRISTI WILSON AND SHEREE WRIGHT-COX,
Petitioners,

v.

CITY OF REDMOND, a political subdivision
of the State of Washington,
Respondent.

APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

NICK ALMQUIST, JOHN ATKINSON, JASON BAIRD, JENNIFER BALDWIN, JON BARNETT, DON BAUMGARTNER, JULIE BEARD, JOHN BERBERICH, TODD BOWMAN, ROBERT BUNN, BRIAN COATS, LAWRENCE CONRAD, THOMAS CONROY, WILLIAM CORSON, JR., RANDALL COX, COLIN DAVIES, BRADLEY DAVIS, FREDA DECKARD, MICHAEL DOWD, PAUL EDWARDSEN, SANDRA ENGLISH, ANNMARIE FEIN, MALCOM FREDERICK, MARTIN FULLER, CHARLES GORMAN, ANNE HARDING, RONALD HARDING, STACEY HOLLAND, SAMUEL HOVENDEN, BRENT HOWARD, JEFFREY HOWERTON, JEFFREY JONES, GLENN KALETA, DOUGLAS KRUEGER, BETSY LAWRENCE, STEVEN LINCOLN, JOAQUIN LIPANA, NICHOLAS LOVELL, LAURIE MAHN, GREGORY MAINS, BRIAN MARKERT, SHAWN McCRILLIS, LAURA MURPHY, PATRICIA NEORR, MIKE NHOKSAYAKHAM, GREGORY PATRICK, RODIC PENCE, MATTHEW PERINGER, GLENN ROTTON, KRISTI ROZE, JEREMY SANDIN, NATHAN SANGER, ERIK SCAIRPON, CRAIG	) NO. 58809-5-I)))) PUBLISHED OPINION)

SHANKS, JOHN SHEEHAN, DOUGLAS SHEPARD, SHARI SHOVLIN, LON SHULTZ, KIMBERLY SMITH, DAVID SOWERS, RICHARD SPRINGS, BRIAN STEINBIS, JEFFREY SWANSON, JAMES TAYLOR, GREGORY TWENTEY, KRISTI WILSON, and SHEREE WRIGHT-COX,

Appellants,

v.

CITY OF REDMOND, a political subdivision of the state of Washington,

Respondent.

FILED: August 27, 2007

BECKER, J. – Having reached an impasse in bargaining, the Redmond Police Association and the City of Redmond went into statutory interest arbitration. The arbitration award included retroactive pay raises for the police employees. The employees sued the City on the ground that the retroactive pay became due as of the day of the arbitrator's award and should have been paid on the next payday after the award instead of two months later. Because the precise date when the retroactive payments were "due" was not fixed by statute, judgment, or contract, the trial court properly entered judgment for the City.

FACTS

The Redmond Police Association had a collective bargaining agreement with the City of Redmond. The agreement expired on December 31, 2001 with no successor agreement having been reached. Negotiations for a 2002 – 2004

contract reached an impasse over 14 issues. The Public Employee Relations Commission certified those issues to interest arbitration under RCW 41.56.450. Before the hearing, the parties resolved all but three of the issues. The unresolved issues included employee wage rates for all three years of the contract.

Interest arbitration for units of uniformed personnel is conducted under a statute that recognizes the need for "an effective and adequate alternative means of settling disputes" in order to avoid strikes. RCW 41.56.430. It is used to determine the terms of the contract between the parties when they cannot negotiate an agreement, and it "results in a new agreement." City of Bellevue v. International Ass'n of Firefighters, Local 1604, 119 Wn.2d 373, 376, 831 P.2d 738 (1992). An interest arbitration award is not subject to appeal to the Public Employee Relations Commission. WAC 391-55-245. It is "final and binding upon both parties," subject only to superior court review "solely upon the question of whether the decision of the panel was arbitrary or capricious." RCW 41.56.450. The decision of the arbitration panel may be enforced in superior court. RCW 41.56.480.

The interest arbitration panel conducted a hearing in October 2003. The chairperson filed a written decision on March 3, 2004; the parties received it two days later. The decision awarded a wage increase of 3.51 percent retroactive to January 1, 2002; another wage increase of 1.5 percent retroactive to January 1, 2003; and a wage increase of .9 percent retroactive to January 1, 2004.

After receiving the decision, the Association corresponded with the City's attorneys by email about preparing a collective bargaining agreement that both sides would then sign. The Association emphasized the desire of the employees to have the retroactive payments made as soon as possible. The bargaining representatives began the process of incorporating the terms of the arbitration decision into a collective bargaining agreement. By April 2, 2004, issues about contract language had been resolved and a final agreement had been produced. The Mayor was expected to sign for the City after receiving approval from the City Council. The Council was expected to approve the agreement at their meeting on May 4. On April 2, the employees asked to have the agreement presented to the City Council at their April 9 meeting. They also asked why the retroactive payments were being "delayed" in light of RCW 41.56.450 which makes the written determination by the chair of the arbitration panel final and binding on the parties.[1]

The City decided to process the wage increases right away, without waiting for formal council approval of the collective bargaining agreement. The City's scheduled pay dates were on the 10th and 25th of each month. The increased pay rates going forward were set to begin with the April 25, 2004, paycheck. Calculation of back pay was more complex and had to be done manually by the payroll department for each of the 76 employees, taking into account overtime pay, longevity, "other special pay," and a "retroactive

[1] Clerk's Papers at 132 (April 2, 2004 email from Association's lawyer).

dependent medical premium deduction for 2003 and 2004."[2] The City made the retroactive payments on May 25, 2004 – the sixth pay day after the arbitration award. The retroactive payments for all 76 employees totaled $399,799.72.

The new collective bargaining agreement between the City and the Association became final on June 8, 2004, with the signatures of both parties' representatives. The agreement was effective from January 1, 2002 to December 31, 2004.

In December 2004, the employees sued the City alleging that the retroactive wages awarded in the March 3 decision should have been paid no later than the payday on March 25, 2004. The trial court dismissed the suit upon finding that the interest arbitration award "did not create an immediate obligation to pay money to the employees."[3] The court found that such an obligation "had to be created through entry of a judgment which was never done or a collective bargaining agreement which was done in June 2004, after the wages had been paid."[4] The employees appeal.

The facts are undisputed. Only legal questions remain. Our review is de novo. Dep't of Corr. v. Fluor Daniel, Inc., No. 78290-3, 2007 Wash. LEXIS 472, at 3 (July 6, 2007).

The centerpiece of the employees' argument is an administrative rule that requires all "wages due" to be paid at least once a month on established regular

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[2] Clerk's Papers at 500 (April 9 email from City's lawyer).
[3] Clerk's Papers at 595 (Conclusion of law 2.1).
[4] Clerk's Papers at 595 (Conclusion of law 2.1).

paydays:

> All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.

WAC 296-126-023; WAC 296-128-035. The employees contend the City violated this rule by waiting two months after the pay day on March 25, 2004, to issue checks for back pay. They contend the violation entitles them to damages, interest, and attorney fees available under three of Washington's wage and hour statutes: the Minimum Wage Act (RCW 49.46), the Wage Payment Act (RCW 49.48), and the Wage Rebate Act (RCW 49.52). In particular they allege that the City's failure to pay by March 25, 2004, amounted to a willful and unlawful withholding of the entire retroactive payment, $399,799.72. Thus, they argue they were entitled to judgment for twice that amount under RCW 49.52.070.

Washington has a "long and proud history of being a pioneer in the protection of employee rights." Drinkwitz v. Alliant Techsystems, Inc., 140 Wn.2d 291, 300, 996 P.2d 582 (2000). The "comprehensive scheme" of wage and hour statutes shows the Legislature's "strong policy in favor of payment of wages due employees." Schilling v. Radio Holdings, Inc., 136 Wn.2d 152, 157, 961 P.2d 371 (1998). Under the statutes cited by the employees:

> the Legislature provided an employee could recover for an employer's failure to pay compensation equivalent to the statutory minimum wage, or time and one-half at the employee's regular wage rate for overtime. Chapter 49.46 RCW. The employee could

> recover wages due at the termination of the employment relationship. Chapter 49.48 RCW. The employee could recover for wages withheld by an employer. Chapter 49.52 RCW.

Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co., 139 Wn.2d 824, 830-31, 991 P.2d 1126 (2000). The statutes provide for recovery of attorney fees in successful actions to recover wages due. See RCW 49.46.090(1), RCW 49.48.030, and RCW 49.52.070. If the employer's refusal to pay was willful, there are no exemptions in chapter 49.52 RCW. Boeing, 139 Wn.2d at 831. A willful failure to pay can be a gross misdemeanor and can make an employer liable "for twice the amount of the wages unlawfully rebated or withheld." RCW 49.52.070. The Department has administrative enforcement powers for claims of failure to pay wages. Schilling, 136 Wn.2d at 159, citing RCW 49.48.030-070.

The payment interval rule recognizes that employers may "have some lag time in paying their employees," Clark v. Kent, 136 Wn. App. 668, 677, 150 P.3d 161 (2007), but it ensures that the lag time is not prolonged indefinitely to the detriment of the employees. Under the rule, "wages due" must be paid on regular paydays set at no longer than monthly intervals.

The retroactive pay raises awarded in the interest arbitration were wages, i.e., "compensation due ... by reason of employment". See RCW 49.46.010(2); see also Hisle v. Todd Pac. Shipyards, 151 Wn.2d 853, 861, 93 P.3d 108 (2004) (retroactive payments ordered by arbitrator and incorporated into collective bargaining agreement were "wages" because they were tied to hours worked). The question is whether those wages became "due" in the sense that would

trigger the payment interval rule.

The retroactive pay raises provided additional compensation to the employees for hours worked in pay periods as far back as 2002, for which the pay dates had long passed. The employees do not, however, argue that the retroactive wages became "due" in those earlier years. Rather, they argue that all the retroactive wages awarded by the interest arbitration panel became collectively due on the date of the award.

The statute states that the arbitration panel's written decision "shall be final and binding upon both parties, subject to review by the superior court" and that the decision "may be enforced at the instance of either party" in superior court. RCW 41.56.450, 480. The statute does not specifically fix a due date.

The employees contend the date of the award became fixed as the due date by City of Moses Lake v. International Association of Firefighters, Local 2052, 68 Wn. App. 742, 749, 847 P.2d 16 (1993). In that case, the City of Moses Lake and its firefighters had received an interest arbitration award establishing a higher rate of pay and making the new pay rate retroactive to the beginning of the year. Firefighters, 68 Wn. App. at 744. Moses Lake sought review by complaint in superior court. The superior court concluded the award was not arbitrary or capricious and entered judgment against the City. The firefighters requested prejudgment interest. The trial court denied this request. On appeal by the City of Moses Lake, the superior court's decision upholding the arbitration award was affirmed. On the firefighters' cross-appeal, the superior court's order

denying prejudgment interest was reversed. The entirety of the court's analysis of the prejudgment interest issue is contained in the following paragraph:

> Prejudgment interest is allowable when the amount claimed is liquidated, i.e., "where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion." Prier v. Refrigeration Eng'g Co., 74 Wn.2d 25, 32, 442 P.2d 621 (1968). See also Hansen v. Rothaus, 107 Wn.2d 468, 472, 730 P.2d 662 (1986). The salary increase meets the definition of liquidated. As of May 31, 1991, the date of the award, the City was under a duty to raise the firefighters' salaries in the amount specified, subject only to review as provided in RCW 41.56.450. Contrary to the City's argument, the signing of a collective bargaining agreement in accordance with that award is not a prerequisite to the legal obligation to abide by the award.

Firefighters, 68 Wn. App. at 749 (emphasis added).

Firefighters does not compel the conclusion that retroactive payments become "due" as of the date of the arbitration award. The discussion in Firefighters does not specifically mention retroactive pay and there was no issue about the application of the payment interval rule. What the court decided is that the firefighters were entitled to prejudgment interest, an issue that typically arises only in a case where there is a judgment. A binding arbitration award is not the equivalent of a judgment. Dep't of Corr. v. Fluor Daniel, Inc., No. 78290-3, 2007 Wash. LEXIS 472, at 9-10 (July 6, 2007).

In this case, unlike in Firefighters, the City did not resist its obligation to abide by the award. Neither party sought review of the arbitration award and no judgment enforcing it had to be entered.

The employees are concerned that unless the phrase "final and binding" in RCW 41.56.450 is interpreted as making retroactive raises "due" as of the date of the arbitration award, a municipality will have no incentive to be prompt in issuing checks for retroactive pay. This concern is not well-founded. Employees have at least two means at their disposal to expedite the payments. The first is to pursue an enforcement action under RCW 41.56.480. The second and likely more preferable means is to contract for a due date.[5] This case shows that the calculation of back pay can be more time-consuming than simply putting a pay increase into effect going forward. The amount of time needed could vary from one jurisdiction to another. The unit of uniformed personnel and the employer are in the best position to assess how much time is reasonable in their particular circumstances and to place a limit on that time by contract.

Here, it does not appear that the City and the Association bargained for a specific due date for retroactive payments. The old collective bargaining agreement did not address how the due date for retroactive payments would be established in the event of an interest arbitration award including such payments. The due date was not certified into interest arbitration as an issue on which the parties had reached impasse in their bargaining for a new agreement. The issue of the due date was not addressed in the arbitrator's award.

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[5] The City suggests that the unfair labor practice jurisdiction of the Public Employee Relations Commission provides yet another avenue to address foot-dragging.

When the award was issued, the City proceeded to calculate back pay due to each employee and issued the checks on May 25, 2004, the sixth pay day after the award. Without a due date fixed by statute, judgment or contract, we cannot say the City was obligated to issue the checks on any earlier date.

In summary, the trial court correctly concluded that the interest arbitration award did not create an immediate obligation to pay money to the employees. The employees have cited no authority demonstrating that the retroactive pay raises awarded by the arbitration decision were due at any time before the City paid them. As there was no unlawful delay, the employees have not shown a violation of the payment interval rule or the wage payment statutes.

Affirmed.

Becker, J.

WE CONCUR:

Text of Relevant Statutes & Regulations

WAC 296-128-035

Payment interval.

All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.

(NOTE: This is the language that was in effect at the time this lawsuit was filed. The regulation was revised effective March 1, 2007, as described in Wash. St. Reg. 07-03-145.)

WAC 296-128-010

Records required.

For all employees who are subject to RCW 49.46.020, employers shall be required to keep and preserve payroll or other records containing the following information and data with respect to each and every employee to whom said section of said act applies:

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes;

(2) Home address;

(3) Occupation in which employed;

(4) Date of birth if under 18;

(5) Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees;

(6) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" shall be any consecutive 24 hours);

(7) Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;

(8) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;

(9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;

(10) Total wages paid each pay period;

(11) Date of payment and the pay period covered by payment;

(12) Employer may use symbols where names or figures are called for so long as such symbols are uniform and defined.

RCW 7.04A.220

Confirmation of award.

After a party to the arbitration proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court shall issue such an order unless the award is modified or corrected under RCW 7.04A.200 or 7.04A.240 or is vacated under RCW 7.04A.230.

RCW 41.56.010

Declaration of purpose.

The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

RCW 41.56.430

Uniformed personnel--Legislative declaration.

The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.450

Uniformed personnel--Interest arbitration panel--Powers and duties--Hearings--Findings and determination.

If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. Upon the failure of the arbitrators to select a neutral chairman within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chairman of the panel: (1) By mutual consent, the two appointed members may jointly request the commission, and the commission shall appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chairman shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chairman shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chairman of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chairman of the arbitration panel, unless the parties agree to a longer period.

The neutral chairman shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chairman shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

RCW 41.56.480

Uniformed personnel--Refusal to submit to procedures--Invoking jurisdiction of superior court--Contempt.

If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW 41.56.440 and 41.56.450, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose.

RCW 41.56.905

Uniformed personnel--Provisions additional--Liberal construction.

The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.

RCW 49.46.005

Declaration of necessity and police power.

Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this chapter to establish a minimum wage for employees of this state to encourage employment opportunities within the state. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety and welfare of the people of this state.

RCW 49.46.010

Definitions.

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director;

(3) "Employ" includes to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a

piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the director of personnel pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(7) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry.

RCW 49.46.020

Minimum hourly wage.

(1) Until January 1, 1999, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than four dollars and ninety cents per hour.

(2) Beginning January 1, 1999, and until January 1, 2000, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than five dollars and seventy cents per hour.

(3) Beginning January 1, 2000, and until January 1, 2001, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than six dollars and fifty cents per hour.

(4)(a) Beginning on January 1, 2001, and each following January 1st as set forth under (b) of this subsection, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.

(b) On September 30, 2000, and on each following September 30th, the department of labor and industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. Each adjusted

minimum wage rate calculated under this subsection (4)(b) takes effect on the following January 1st.

(5) The director shall by regulation establish the minimum wage for employees under the age of eighteen years.

RCW 49.46.040

Investigation--Services of federal agencies--Employer's records-- Industrial homework.

(1) The director or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(2) With the consent and cooperation of federal agencies charged with the administration of federal labor laws, the director may, for the purpose of carrying out his functions and duties under this chapter, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

(3) Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations thereunder.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect.

RCW 49.46.090

Payment of wages less than chapter requirements--Employer's liability--Assignment of wage claim.

(1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

(2) At the written request of any employee paid less than the wages to which he is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

RCW 49.46.130

Minimum rate of compensation for employment in excess of forty hour work week--Exceptions.

(1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or

tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trading practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed.

RCW 49.48.010

Payment of wages due to employee ceasing work to be at end of pay period--Exceptions--Authorized deductions or withholdings.

When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period: PROVIDED, HOWEVER, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: PROVIDED FURTHER, That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

(1) Required by state or federal law; or

(2) Specifically agreed upon orally or in writing by the employee and employer; or

(3) For medical, surgical or hospital care or service, pursuant to any rule or regulation:

PROVIDED, HOWEVER, That the deduction is openly, clearly and in due course recorded in the employer's books and records.

Paragraph *three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his employees or former employees.

RCW 49.48.030

Attorney's fee in action on wages--Exception.

In any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: PROVIDED, HOWEVER, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary.

RCW 49.52.050

Rebates of wages--False records--Penalty.

Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor.

RCW 49.52.070

Civil liability for double damages.

Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of subdivisions (1) and (2) of RCW 49.52.050 shall be liable in a civil action by the aggrieved employee or his assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.

Case No.

SUPREME COURT
OF THE STATE OF WASHINGTON

NICK ALMQUIST, JOHN ATKINSON, JASON BAIRD, et al.	**Court of Appeals No. 58809-5-I**
Petitioners,	**King County No. 04-2-40865-2 SEA**
v.	CERTIFICATE OF SERVICE
CITY OF REDMOND, a political subdivision of the State of Washington,	
Respondent.	

I hereby declare under penalty of perjury according to the laws of the State of Washington that on this date I have caused a true and correct copy of a Petition for Review, Appendix, and Certificate of Service to be served via ABC Legal Messenger on the following:

Greg Rubstello
Ogden Murphy Wallace, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686

I have also caused the original of the above to be filed with the Court of Appeals of the State of Washington Division One via ABC Legal Messenger.

Executed in Seattle, Washington this 26th day of September, 2007.

Molly Price

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(206) 957-0926 Fax: (206) 762-2418